

## REMARKS

This complete Response is timely filed within two months of the mailing date of the pending final Office Action. No fee is required. 37 CFR § 1.134-1.136.

Claims 1, 3-8, 10-13, and 15-19 are pending in this application. By this amendment, Claim 18 is amended. No new matter has been added. Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

### **I. THE CLAIMS ARE PATENTABLE OVER U.S. PATENT NO. 5,865,791**

Claims 1, 3-8, 10-13, and 15-19 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,865,791 to Whayne, *et al.* (hereinafter "Whayne"). This rejection is respectfully traversed.

Claims 1, 8, and 13 of the present application are directed to a delivery apparatus for performing a surgical procedure. The delivery apparatus, as recited in Claims 1, 8, and 13, comprises; a flexible catheter capable of assuming an angular configuration at a predetermined time during the surgical procedure, wherein the flexible catheter has an outer catheter and an inner catheter movably disposed in the outer catheter; a penetration apparatus disposed within the inner catheter, the penetration apparatus further comprises a first end having a tip for creating an aperture, and a second end that is substantially free; and at least one fastener in communication with the penetration apparatus.

As amended, Claim 18 recites a method for securing a prosthetic graft to a vessel at a surgical site, comprising the steps of: advancing a delivery apparatus to the surgical site; activating the delivery apparatus to contact the surgical site; advancing the

delivery apparatus wherein the delivery apparatus creates an aperture at the surgical site; and releasing a fastener to the surgical site to secure the prosthetic graft to the vessel, wherein at least one portion of the fastener further comprises a sealant material.

Claim 19 of the present application is directed to a delivery apparatus for performing a surgical procedure. The delivery apparatus, as recited in the Claim 19, comprises; a flexible catheter capable of assuming an angular configuration at a predetermined time during the surgical procedure; a penetration apparatus having a solid core disposed within the inner catheter, the penetration apparatus further comprises a first end having a tip for creating an aperture, and a second end that is substantially free; and at least one fastener in communication with the penetration apparatus.

Wayne is directed to systems and methods for reducing the regions of blood stasis and thrombus formation in atrial appendages in the human body. See Col. 1, ll. 5-10. A catheter **110** is disclosed having a hollow needle **66** that is reciprocally fitted in a distal tip member **114**. See Col. 12, ll. 10-31; Figs. 29-30. A pushing stylet **118** is reciprocally fitted within the hollow needle **66** and may be used to expel an expandable anchor **116**. *Id.*

Wayne does not disclose, teach, or suggest the claimed subject matter of the present invention. With respect to Claims 1, 8, and 13, Wayne does not disclose a flexible catheter having an outer catheter and an inner catheter movably disposed in the outer catheter. Rather, Wayne discloses a needle **66** fitted in a single catheter **110**. Moreover, Wayne does not disclose a penetration apparatus *disposed within an inner catheter*, as presently claimed. Wayne instead discloses a needle **66** with a sharp tip.

With respect to Claim 18, Whayne is silent as to securing a prosthetic graft to a vessel and does not disclose or suggest a method as presently claimed. With respect to Claim 19, Whayne does not disclose a delivery apparatus having a flexible catheter; and a penetration apparatus having a solid core disposed within the catheter, as presently claimed. The needle 66 disclosed in Whayne is hollow.

For at least the reasons set forth above, Applicants respectfully submit that Whayne fails to disclose, teach or suggest the invention claimed by Applicants. Reconsideration and withdrawal of the rejections are respectfully requested.

## **II. CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully submit that the claims of the present invention define subject matter patentable over the references cited by the Office and that the application is in condition for allowance. Should the Office believe that anything further is desirable to place the application in better condition for allowance, the Office is invited to contact Applicants' undersigned attorney at the below listed telephone number.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment to deposit account number 03-2469. Moreover, if the deposit account contains insufficient funds, the Commissioner is hereby invited to contact Applicant's undersigned representative to arrange payment.

Respectfully submitted,

Date: February 23, 2005



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